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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/083,966 | 02/25/2002 | Nicholas P. Van Brunt | 7175-74147 | 2081 |
| 23643 | 7590 | 06/17/2004 | EXAMINER | |
| BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204 | | | DEMILLE, DANTON D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3764 | |

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 10/083,966 | Applicant(s) VAN BRUNT ET AL. | |
| | Examiner Danton DeMille | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-47 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 27-47 is/are allowed.
 6) ☒ Claim(s) 1, 7, 8 and 10-26 is/are rejected.
 7) ☒ Claim(s) 2-6 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The drawings were changed by the last amendment to include figures 3a, 3b, 3c. The brief description of the drawings in the specification will have to be amended to reflect the changes.
2. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. **Claims 1, 8, 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abramov et al. 5,806,512 in view of Press et al. 5,398,676.**
4. Abramov teaches a chest compression vest 14 for applying force to the chest, a pressure generator 20 for providing oscillating pressure and a mouthpiece 38 having a first portion 46a configured to extend into the mouth. It would appear that the first portion 46a would be long enough to depress at least a portion of the patient's tongue however, Abramov is silent with regard to this function.
5. In the art of mouthpieces for ventilation Press is cited to teach a mouthpiece that includes a first portion 64 configured to extend into the patient's mouth including a first portion 64 functioning as a tongue depressor column 5, lines 6-12.
6. It would have been obvious to one of ordinary skill in the art to modify Abramov, if not inherent, to have the first portion that extends into the mouth function as a tongue depressor as taught by Press to clear the passageway for proper ventilation.
7. Regarding claims 10, 22, the rectangular shape of the Press mouthpiece would appear to comprehend "a generally oval cross-section".

8. Regarding claims 11, 17, 18, 23, Press appears silent with regard to the exact dimensions of the mouthpiece however, the claimed dimensions would appear to well within the realm of the artisan of ordinary skill. There appears to be no criticality to these dimensions and would have been obvious to one of ordinary skill in the art to find the optimum dimensions to allow for free flow of air.

9. Regarding claim 12, Press also teaches a port 30 in a second portion of the mouthpiece for connection to a source. The source of Press may not be connection to an aerosolized solution however, it is capable to connected to such and therefore would anticipate the claimed port.

10. Regarding claims 13, 24, 26, the mouthpiece of Press includes a shield and has an oval shape to seal the mouthpiece to the patient to prevent any loss of air. This structure would comprehend the claimed length adapted for limiting loss of the aerosolized solution. Since the aerosolized solution is not part of the claimed invention Press doesn't have to show it.

11. Regarding claims 14, 25, the mouthpiece of Press includes a second portion 62 for location outside the mouth and in communication with the ventilator. The second portion 62 is a coupling for detachably connecting to the airway tube 32. When the airway tube 32 is not connected to the coupling 62 it would be in communication with the atmosphere and thereby comprehending the claims. The mouthpiece has an outside portion that is capable of directly communicating with the atmosphere.

12. Regarding claims 15 and 16, when ventilating a patient each patient will have varying degrees of volume. Each patient will also have different requirements for ventilation due to illness. There appears to be no unobviousness to finding the optimum velocity for any particular patient.

13. Regarding claim 19, a sputum sample would be induced by the pressures applied by Abramov if the patient had such a condition that easily induced sputum. Such limitation is dependent on the condition of the patient who is not part of the claimed combination.

14. **Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1, further in view of Van Brunt et al. 6,155,996.**

15. Abramov appears silent with regard to the details of the size of the vest 14. Since there is an abdominal portion 12 that has an upper edge at the bottom of the rib cage it would follow that the bottom of the chest portion 14 would end near the bottom of the rib cage. The upper edge would be even with the arm pits which is near the collar bone. The inflatable portion at the chest would appear to comprehend the claimed dimensions however, Van Brunt is cited to teach such details. Van Brunt teaches "[c]oncave surfaces 16 are positioned to allow the vest to slide up under the patient's arms so that the vest is suitably high on the patient's chest and not about the abdomen" column 3, lines 31-34. It would have been obvious to one of ordinary skill in the art to further modify Abramov to shape the chest portion to be like that of Van Brunt to better conform to the chest of the patient.

Allowable Subject Matter

16. Claims 2-6 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 27-47 are allowable over prior art to which the examiner is aware.

Response to Arguments

18. Applicant's arguments with respect to claims 1, 7, 8, 10-26 have been considered but are moot in view of the new ground(s) of rejection.

19. Abramov teaches all of the structural limitations recited including a mouthpiece that has a first portion configured to extend sufficiently into the patient's mouth to depress the patient's tongue at least to a certain extent. The first portion 46a extends a distance into the mouth and therefore would depress the tongue at least to a certain extent. If it is felt that the first portion 46a doesn't depress the tongue such is well known as taught by Press. The mouthpiece 64 of Press extends sufficiently into the patient's mouth to depress the tongue as recited column 5, lines 6-12.


20. While the Abramov device is intended for CPR there is nothing claimed that defines over the Abramov structure. All of the claimed structural limitations are found in Abramov and the Abramov device is capable of inducing sputum from the patient if the patient had a condition with sputum in the lungs such as pneumonia. Compressing the chest externally with enough force and forcing air internally would cause pneumonia patients to cough up sputum. Coughing up sputum by the patient is possible by the Abramov device. There is nothing claimed that would somehow define over the Abramov device with a patient coughing up sputum during the application of CPR.

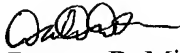
Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3764

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

ddd
15 June, 2004
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Art Unit 3764